

1 **NOTE: THIS DRAFT REGULATION SUPERCEDES THE DRAFT**  
2 **REGULATION THAT FOLLOWS ON PAGE 5**  
3

4 Adopt 2 Cal. Code Regs. Section 18413 to read:

5 **§ 18413. Reporting Independent Expenditures by Eligible 501(c)(4) Organizations.**

6 (a) Application. This regulation provides an event-based reporting alternative  
7 for an eligible 501(c)(4) organization that makes occasional independent expenditures  
8 from its general treasury to support or oppose a ballot measure in California. This  
9 reporting option does not apply for contributions or independent expenditures made by a  
10 501(c)(4) organization to support or oppose a candidate in a California election.

11 (b) Definitions. For purposes of this regulation, “Eligible 501(c)(4)  
12 organization” means an organization to which all of the following apply:

13 (1) The organization has received 501(c)(4) tax-exempt status from the Internal  
14 Revenue Service and is operating under 501(c)(4) of the Internal Revenue Code; and if  
15 incorporated in the State of California, has received a tax-exempt determination from the  
16 California Franchise Tax Board under California Revenue and Taxation Code Section  
17 23701f, or if incorporated in a state other than California, has received the required tax-  
18 exempt determination under the laws of the state of incorporation.

19 (2) The organization is multipurpose and occasionally makes independent  
20 expenditures using donated funds from its general treasury to support or oppose ballot  
21 measures in California. “Occasionally makes independent expenditures” means either of  
22 the following:

23 (A) Expenditures totaling, in the aggregate in a calendar year, less than \$500,000  
24 on behalf of four or fewer state ballot measures.

1       (B) Expenditures totaling, in the aggregate in a calendar year, less than \$50,000  
2 on behalf of one or more local ballot measures.

3       (c) Reporting Options. An eligible 501(c)(4) organization that triggers the “one  
4 bite of the apple” test in Regulation 18215(b)(1), and subsequently makes an  
5 independent expenditure from its general treasury is required to identify the donors of  
6 funds utilized to make independent expenditures on ballot measures in California. An  
7 eligible 501(c)(4) organization shall either (1) report these independent expenditures as a  
8 recipient committee or (2) elect to report the independent expenditures under the event-  
9 based reporting set forth in subdivision (d) without designating a treasurer, filing a  
10 statement of organization, periodic recipient committee reports on Form 460, or a  
11 statement of termination.

12       (d) Event-Based Independent Expenditure Reporting.

13       (1) When to File. An eligible 501(c)(4) organization that elects event-based  
14 reporting shall report an independent expenditure of \$1,000 or more to support or oppose  
15 the qualification or passage of a ballot measure on an Independent Expenditure Report  
16 (Form 496) filed within 10 business days after making the independent expenditure.  
17 However, if the eligible 501(c)(4) organization makes the independent expenditure  
18 during the 90 days preceding a state election or 16 days preceding a local election in  
19 which the measure appears on the ballot, it shall file the Independent Expenditure Report  
20 within 24 hours after making the independent expenditure.

21       (2) Report Contents.

22       (A) The Form 496 report shall list the eligible 501(c)(4) organization’s full name  
23 and street address, and in addition, shall include the designation “Eligible 501(c)(4) IE

1 Report” in the “Name of Filer” field, indicating the organization’s election to use event-  
2 based independent expenditure reporting. The report shall include the name of a current  
3 officer, director, or trustee of the 501(c)(4) organization listed on the organization’s  
4 Internal Revenue Service Form 990, who shall be responsible for the accuracy and  
5 completeness of the report.

6 (B) The Form 496 report shall contain the information about the independent  
7 expenditure required by the form concerning the date, amount, and description of the  
8 goods or services for which the expenditure was made. The report shall identify the  
9 measure the independent expenditure is supporting or opposing as specified in Section  
10 84204.5(a)(2).

11 (C) The Form 496 report shall identify the donors whose payments of \$100 or  
12 more to the general treasury were used to pay for the independent expenditure. If only a  
13 part of a donor’s payment to the organization was used to make independent  
14 expenditures, the payment may be apportioned for reporting purposes. The organization  
15 may use any reasonable method that accurately reflects the sources of funds for the  
16 expenditure, such as apportioning the donor’s payments, or using the last in, first out,  
17 accounting method. Once the organization selects an accounting method, it must  
18 continue to use the same method. Donor payments to the organization that may be  
19 subject to itemized disclosure are those made after the date of the organization’s “first  
20 bite of the apple” under Regulation 18215(b)(1); however, if the donor knows that his or  
21 her payment to the organization will be used for ballot measure independent expenditures  
22 the payment shall be disclosed as contributed by that donor.

1        (D) The organization shall maintain the records necessary to document the donor  
2 contributions and the independent expenditures reported.

3        (3) Where to File. For an independent expenditure in connection with a state  
4 measure, the organization shall file a Form 496 report electronically with the California  
5 Secretary of State. For an independent expenditure in connection with a local measure,  
6 the organization shall file a Form 496 report electronically with the California Secretary  
7 of State, and shall also file a copy of the report with the clerk of the city or county in  
8 which the measure is being voted on.

9        (e) A 501(c)(4) organization that is not an eligible 501(c)(4) organization but  
10 otherwise qualifies as a recipient committee under Title 9 (commencing with Section  
11 81000) of the Government Code shall report as a recipient committee.

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13        NOTE: Authority cited: Section 83112, Government Code.

14        Reference: Sections 82013, Section 84204, Section 85500, Government Code.

1 Adopt 2 Cal. Code Regs. Section 18413 to read:

2 **§ 18413. Reporting Independent Expenditures by Certain Non-Profit Entities.**

3 (a) An independent expenditure committee defined by Section 82013(b) includes  
4 a multi-purpose non-profit corporation that meets all of the following criteria:

5 (1) The corporation is organized and operates under Section 501(c)(4) of the  
6 Internal Revenue Code.

7 (2) The corporation uses a donation to its general treasury to pay for an  
8 independent expenditure supporting or opposing the qualification or passage of a ballot  
9 measure.

10 (3) The corporation does not qualify as a recipient committee under Section  
11 82013(a).

12 (b) A donor to the general treasury of a multi-purpose non-profit corporation does  
13 not have reason to know, within the meaning of Regulation 18215(b)(1), that the  
14 corporation has “made expenditures or contributions” if the corporation uses general  
15 treasury funds to pay for an independent expenditure supporting or opposing the  
16 qualification or passage of a ballot measure. However, a donor to the general treasury of  
17 a multi-purpose non-profit corporation may have reason to know, within the meaning of  
18 Regulation 18215(b)(1), that the corporation has made expenditures or contributions if  
19 the corporation uses general treasury funds to make other expenditures or contributions.

20 (c) A payment to the general treasury of a multi-purpose non-profit corporation is  
21 a contribution that may qualify the corporation as a recipient committee under Section  
22 82013(a) if the payment is made expressly for use as a contribution or expenditure.

1       (d) A multi-purpose non-profit corporation that qualifies as an independent  
2 expenditure committee described in subdivision (a) shall report an independent  
3 expenditure of \$1,000 or more to support or oppose the qualification or passage of a  
4 ballot measure on an Independent Expenditure Report (Form 496) filed within 10  
5 business days after it has made the independent expenditure, identifying the donors  
6 whose payments of \$100 or more to the general treasury were used to pay for the  
7 independent expenditure, as determined by a “last in, first out” accounting method.  
8 However, if the corporation makes the independent expenditure during the 16 days  
9 immediately prior to the election in which the ballot measure appears on the ballot, it  
10 shall file the Independent Expenditure Report by facsimile transmission, guaranteed  
11 overnight delivery, or personal delivery within 24 hours after the corporation makes the  
12 independent expenditure. In addition, an independent expenditure report subject to the  
13 electronic filing provisions of Section 85500 shall be filed by the corporation as  
14 prescribed by that statute.

15       (e) A multi-purpose non-profit independent expenditure committee described in  
16 subdivision (a) is required to report an independent expenditure only once, as specified in  
17 subdivision (d), unless the corporation maintains or controls a committee defined under  
18 Section 82013(a). If the corporation maintains or controls a committee defined under  
19 Section 82013(a), the corporation shall report an independent expenditure made from its  
20 general treasury funds both as specified in subdivision (d), and on reports by its  
21 committee for the election period in which it made the independent expenditure.

22 NOTE: Authority cited: Section 83112, Government Code.

23 Reference: Sections 82013, 85500, Government Code.